

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 53 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF WEALTH TAX

Versus

SA RATHOD

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Appearance:

MR MANISH R BHATT for Petitioner

SERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE R.BALIA.

Date of decision: 10/12/96

ORAL JUDGEMENT

(Per Balia,J)

1. The two questions referred to at the instance of the revenue by the Income Tax Appellate Tribunal arising out of its Wealth Tax Applications Nos. 520 to 527 of 1981 are as under:

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provision of Section 2(m)(iii) of the Wealth Tax Act, 1957 were not applicable in respect of the wealth tax liability?"

2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of Section 2(m)(iii) of the Wealth Tax Act, 1957 were not applicable in respect of the state duty liability?"

2. Both the questions raise an issue about the applicability of Section 2(m)(iii) as it stood during the relevant assessment year regarding exclusion of wealth tax liability for the assessment year in question and Estate Duty liability in respect of the deceased predecessor.

3. Section 2(m)(iii) at the relevant time read as under:

"2(m)(iii) The amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953 (34 of 1953), the Expenditure Tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958), -

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him; or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date;"

4. A reading of the provision itself makes it abundantly clear that before this provision can be

invoked for exclusion of the liability arising on account of wealth tax or, the Estate Duty or under the Income Tax Act or Expenditure Tax Act or the Gift Tax Act, the pre condition is that such amount may not have become payable in pursuance of any order or in pursuance of the Act or law relating to the aforesaid taxations. The assumed liability on the basis of the pending proceedings cannot be invoked. This view stands fortified by the decision of this Court in C.I.T. v. Kantilal Manilal reported in 88 ITR 125 and of the Supreme Court in C.I.T. v. Kantilal Manilal reported in 152 ITR 447.

5. Accordingly, we answer both the questions referred to above in affirmative, that is to say, in favour of the assessee and against the revenue.

6. The following question has been referred to this Court at the instance of the assessee:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee had reversionary interest in the two properties and not the contingent remainder man's interest as claimed by him: that the value of such interest was includible in the wealth of the assessee instead of holding in the wealth of the assessee and further that such value is to be determined on the basis of market value of the properties on the valuation date and deducting therefrom the value of life interest of the two mothers of the assessee and not on the basis of actuarial valuation on basis of hypothetical market value of such interest?"

7. Since, no one appears on behalf of the assessee at whose instance above question has been referred for our opinion it appears that he is not interested to pursue the matter. We therefore decline to answer the same.

8. This reference accordingly stands disposed of with no order as to costs.